

111TH CONGRESS  
2D SESSION

# H. R. 5288

To amend the Dairy Production Stabilization Act of 1983 to establish a dairy price stabilization program.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2010

Mr. COSTA (for himself, Mr. WELCH, Mr. COURTNEY, Mr. LARSEN of Washington, and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

To amend the Dairy Production Stabilization Act of 1983 to establish a dairy price stabilization program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Dairy Price Stabiliza-  
5       tion Program Act of 2010”.

6       **SEC. 2. DAIRY PRICE STABILIZATION PROGRAM.**

7       The Dairy Production Stabilization Act of 1983 (7  
8       U.S.C. 1421 note; title I of Public Law 98–189) is amend-  
9       ed by adding at the end the following new subtitle:

**“Subtitle D—Dairy Price  
Stabilization Program**

**“SEC. 141. DEFINITIONS.**

“In this subtitle:

“(1) ALLOWABLE MILK MARKETING.—The term ‘allowable milk marketing’ means the quantity of milk production that a dairy facility may produce during a quarter without incurring a market access fee, as determined under section 143(b)(1).

“(2) ALLOWABLE MILK MARKETING GROWTH RATE.—The term ‘allowable milk marketing growth rate’ means the allowable milk marketing growth rate established by the Secretary for the applicable quarter under section 143(b)(1).

“(3) ALTERNATIVE MARKET ACCESS FEE.—The term ‘alternative market access fee’ means a fee described in section 143(b)(2) that is assessed on all milk produced in excess of the allowable milk marketings of a dairy facility.

“(4) APPEALS COMMITTEE.—The term ‘Appeals Committee’ means the producer appeals committee established under section 142(c).

“(5) DAIRY FACILITY.—The term ‘dairy facility’ means an operation on a property, or set of properties that are contiguous or separated only by

1 a public right-of-way, that is directly related to rais-  
2 ing cows or producing milk from cows for the pur-  
3 pose of making a profit or for a livelihood.

4 “(6) MARKET ACCESS FEE DIVIDEND.—The  
5 term ‘market access fee dividend’ means the market  
6 access fees collected during an applicable quarter  
7 that are redistributed to dairy facilities with allow-  
8 able milk marketings under section 143(e).

9 “(7) MILK HANDLER.—The term ‘milk handler’  
10 means a person that makes payments to a dairy fa-  
11 cility for milk produced in the United States and  
12 purchased from the dairy facility for commercial use.

13 “(8) ORDER.—The term ‘order’ means an order  
14 issued by the Secretary under section 142(a).

15 “(9) PRODUCER.—The term ‘producer’ means  
16 all persons engaged in the production of bovine milk  
17 for commercial use. All producers holding a milk li-  
18 cense shall be included.

19 “(10) PRODUCER BOARD.—The term ‘Producer  
20 Board’ means the Producer Board established under  
21 section 142(b).

22 “(11) PROGRAM.—The term ‘Program’ means  
23 the Dairy Price Stabilization Program established  
24 under section 142(a).

1           “(12) QUARTER.—The term ‘quarter’ means  
2 each of the following 4 quarters of a calendar year:

3           “(A) January 1 through March 31.

4           “(B) April 1 through June 30.

5           “(C) July 1 through September 30.

6           “(D) October 1 through December 31.

7           “(13) REGION.—The term ‘region’ means each  
8 of the following

9           “(A) Region 1, Northeast, consisting of the  
10 States of Connecticut, Delaware, Maine, Mary-  
11 land, Massachusetts, New Hampshire, New Jer-  
12 sey, New York, Pennsylvania, Rhode Island,  
13 Vermont, and West Virginia.

14           “(B) Region 2, Southeast, consisting of the  
15 States of Alabama, Arkansas, Florida, Georgia,  
16 Kentucky, Louisiana, Mississippi, Missouri,  
17 North Carolina, South Carolina, Tennessee, and  
18 Virginia.

19           “(C) Region 3, Midwest, consisting of the  
20 States of Illinois, Indiana, Iowa, Michigan, Min-  
21 nesota, Nebraska, North Dakota, Ohio, South  
22 Dakota, and Wisconsin.

23           “(D) Region 4, South, consisting of the  
24 States of Kansas, New Mexico, Oklahoma, and  
25 Texas.

1           “(E) Region 5, Northwest, consisting of  
2           the States of Colorado, Idaho, Montana, Or-  
3           egon, Utah, Washington, and Wyoming.

4           “(F) Region 6, West, consisting of the  
5           States of Arizona, California, and Nevada.

6           “(14) SECRETARY.—The term ‘Secretary’  
7           means the Secretary of Agriculture, acting in con-  
8           sultation with the Appeals Committee or Producer  
9           Board (as appropriate).

10          “(15) STANDARD MARKET ACCESS FEE.—The  
11          term ‘standard market access fee’ means a fee as-  
12          sessed under section 143(d) on all milk produced by  
13          a dairy facility.

14   **“SEC. 142. ESTABLISHMENT.**

15          “(a) ISSUANCE OF ORDERS.—

16          “(1) PROPOSED ORDER.—Not later than 60  
17          days after the date of the enactment of this subtitle,  
18          the Secretary shall publish in the Federal Register  
19          a proposed order to establish a program to be known  
20          as the ‘Dairy Price Stabilization Program’ that shall  
21          apply to all dairy facilities within the contiguous  
22          United States that produce milk for sale commer-  
23          cially.

24          “(2) REFERENDUM ON PROPOSED ORDER.—  
25          Not later than 90 days after the date of the enact-

1       ment of this subtitle, the Secretary shall conduct a  
2       referendum among producers who, during a rep-  
3       resentative period (as determined by the Secretary),  
4       have been engaged in the production of milk for  
5       commercial use for the purpose of ascertaining  
6       whether the proposed order shall take effect. The  
7       Program shall be implemented only if the Secretary  
8       determines that it has been approved by not less  
9       than a majority of the eligible producers voting in  
10      the referendum. If implementation of the Program is  
11      not approved by a majority of the eligible producers  
12      voting in the referendum, the Secretary may not  
13      issue a final order to establish the Program. To de-  
14      termine the approval or disapproval of producers,  
15      the Secretary shall consider the approval or dis-  
16      approval by any cooperative association of producers,  
17      engaged in a bona fide manner in marketing milk or  
18      the products thereof, as the approval or disapproval  
19      of the producers who are members of or under con-  
20      tract with such cooperative association of producers.  
21      If a cooperative association of producers elects to  
22      vote on behalf of its members, such cooperative asso-  
23      ciation shall provide each producer, on whose behalf  
24      the cooperative association is expressing approval or  
25      disapproval, a description of the question presented

1 in the referendum together with a statement of the  
2 manner in which the cooperative association intends  
3 to cast its vote on behalf of the membership. Such  
4 information shall inform the producer of procedures  
5 to follow to cast an individual ballot should the pro-  
6 ducer so choose within the period of time established  
7 by the Secretary for casting ballots. Such notifica-  
8 tion shall be made at least 30 days before the ref-  
9 erendum and shall include an official ballot. The bal-  
10 lots shall be tabulated by the Secretary and the vote  
11 of the cooperative association shall be adjusted to re-  
12 flect the individual votes.

13 “(3) FINAL ORDER.—If the Secretary deter-  
14 mines that the proposed order has been approved by  
15 not less than a majority of the eligible producers  
16 voting in the referendum required by paragraph (2),  
17 the Secretary shall issue, not later than 30 days  
18 after such determination, a final order to establish  
19 the Program.

20 “(4) REFERENDUM ON CONTINUATION OF PRO-  
21 GRAM.—Not later than 3 years after the date of the  
22 enactment of this subtitle, the Secretary shall con-  
23 duct a referendum among producers who, during a  
24 representative period (as determined by the Sec-  
25 retary), have been engaged in the production of milk

1 for commercial use, for the purpose of ascertaining  
2 whether the Program then in effect shall be contin-  
3 ued. The program shall be continued only if the Sec-  
4 retary determines that it has been approved by not  
5 less than a majority of the eligible producers voting  
6 in the referendum. If continuation of the Program is  
7 not approved by a majority of the eligible producers  
8 voting in the referendum, the Secretary shall termi-  
9 nate collection of fees under the Program within six  
10 months after the Secretary determines that such ac-  
11 tion is favored by a majority of the eligible pro-  
12 ducers voting in the referendum and shall terminate  
13 the program in an orderly manner as soon as prac-  
14 ticable after such determination.

15 “(b) PRODUCER BOARD.—

16 “(1) IN GENERAL.—The order shall provide for  
17 the establishment of a board of directors to be  
18 known as the ‘Producer Board’ to advise the Sec-  
19 retary on administration of the Program.

20 “(2) COMPOSITION.—The Producer Board shall  
21 be composed of 30 members, of whom—

22 “(A) 24 shall be producers, of whom—

23 “(i) 12 producers shall be appointed  
24 based upon region, with 2 members from



1 each of the 6 dairy producing regions in  
2 the United States; and

3 “(ii) 12 producers shall be appointed  
4 based upon the geographical distribution of  
5 milk production volume throughout the  
6 United States;

7 “(B) 2 shall represent dairy consumers;

8 “(C) 2 shall represent fluid milk bottlers;

9 and

10 “(D) 2 shall represent dairy product proc-  
11 essors.

12 “(3) APPOINTMENT.—The Secretary shall ap-  
13 point the members of the Producer Board after con-  
14 sidering any nominations submitted by interested  
15 parties.

16 “(4) ADVISOR.—

17 “(A) IN GENERAL.—The Secretary shall  
18 appoint a dairy economist to advise the Pro-  
19 ducer Board.

20 “(B) NONVOTING MEMBER.—The indi-  
21 vidual appointed under subparagraph (A) shall  
22 be a nonvoting member of the Producer Board.

23 “(c) PRODUCER APPEALS COMMITTEE.—The order  
24 shall require the Producer Board to establish a committee  
25 to be known as the ‘Producer Appeals Committee’ to ad-

1   vise the Secretary on appeals of decisions made during the  
2   first year of operation of the Program.

3   **“SEC. 143. OPERATION OF THE PROGRAM.**

4       “(a) ESTABLISHMENT OF RATES, FEES, DIVIDENDS,  
5   AND INITIAL ALLOWABLE MILK MARKETINGS.—

6           “(1) IN GENERAL.—The order shall provide for  
7       the establishment of rates and fees and the payment  
8       of dividends in accordance with this section.

9           “(2) INITIAL ESTABLISHMENT OF ALLOWABLE  
10   MILK MARKETINGS.—The initial establishment of al-  
11   lowable milk marketings for a dairy facility under  
12   this subtitle shall based on the highest of the annual  
13   milk marketings of the dairy facility from the cal-  
14   endar year ending—

15               “(A) December 31, 2007;

16               “(B) December 31, 2008; or

17               “(C) December 31, 2009.

18   “(b) ESTABLISHMENT OF RATES AND FEES.—

19           “(1) ALLOWABLE MILK MARKETING GROWTH  
20   RATE.—

21               “(A) CALCULATION OF ALLOWABLE MILK  
22   MARKETING.—The allowable milk marketings of  
23   a dairy facility for a quarter shall be equal to  
24   the quantity of milk commercially produced by  
25   the dairy facility during the corresponding

1 quarter during the previous calendar year, as  
 2 adjusted to reflect the allowable milk marketing  
 3 growth rate for the quarter.

4 “(B) CALCULATION OF ALLOWABLE MILK  
 5 MARKETING GROWTH RATE.—At least 30 days  
 6 before the first day of each quarter, the Sec-  
 7 retary, after considering any recommendations  
 8 made by the Producer Board, shall establish the  
 9 allowable milk marketing growth rate for the  
 10 upcoming quarter based on the following table:

<b>“Milk Feed Ratio</b>	<b>Allowable milk marketing growth rate (in percent)</b>
Milk Feed Ratio greater than/equal to 2.00 .....	3.00
Milk Feed Ratio 1.75–1.99 .....	0.00
Milk Feed Ratio less than/equal to 1.74 .....	–3.00

11 “(C) MILK FEED RATION.—For purposes  
 12 of this paragraph and paragraph (2)(A), the  
 13 Secretary shall calculate a milk feed ratio for a  
 14 month using the same procedures used to cal-  
 15 culate the milk feed ratio on page 64 of the  
 16 USDA January 2010 Agricultural Prices publi-  
 17 cation (including the data and factors noted in  
 18 footnote 4).

19 “(D) QUARTERLY ANNOUNCEMENT OF  
 20 THE ALLOWABLE MILK MARKETING GROWTH  
 21 RATE.—For the purpose of announcing the  
 22 quarterly allowable milk marketing growth rate,

1 the Secretary shall use the simple average of  
 2 the three most recently available monthly fig-  
 3 ures for the milk feed ratio.

4 “(2) STANDARD AND ALTERNATIVE MARKET  
 5 ACCESS FEES.—

6 “(A) STANDARD MARKET ACCESS FEE.—

7 “(i) IN GENERAL.—At least 30 days  
 8 before the first day of each quarter, the  
 9 Secretary shall establish the standard mar-  
 10 ket access fee to be assessed on all com-  
 11 mercial milk production of a dairy facility  
 12 for that quarter.

13 “(ii) REQUIREMENT.—The standard  
 14 market access fee shall be based on the  
 15 number of hundredweights of raw milk  
 16 produced for commercial use, as deter-  
 17 mined by the Secretary.

18 “(iii) CALCULATION OF STANDARD  
 19 MARKET ACCESS FEE.—The standard mar-  
 20 ket access fee shall be determined using  
 21 the following table:

<b>“Milk Feed Ratio</b>	<b>Market Access Fee</b>
Milk Feed Ratio greater than/equal to 3.00 .....	\$0.03
Milk Feed Ratio 2.50–2.99 .....	\$0.13
Milk Feed Ratio 2.00–2.49 .....	\$0.25
Milk Feed Ratio less than/equal to 1.99 .....	\$0.50

1 “(iv) QUARTERLY ANNOUNCEMENT OF  
2 THE MARKET ACCESS FEE.—For the pur-  
3 pose of announcing the quarterly standard  
4 market access fee, the Secretary shall use  
5 the simple average of the three most re-  
6 cently available monthly figures for the  
7 milk feed ratio.

8 “(B) ALTERNATIVE ACCESS FEE.—The  
9 amount of the alternative market access fee to  
10 be assessed on all commercial milk production  
11 of a dairy facility that exceeds the allowable  
12 milk marketings of the dairy facility for a quar-  
13 ter shall be equal to the product obtained by  
14 multiplying—

15 “(i) 5; by

16 “(ii) the standard market access fee  
17 amount per hundredweight of milk.

18 “(3) REVISIONS.—The Secretary may make re-  
19 visions to the calculations of the market access fee  
20 and allowable milk marketing growth rate, but only  
21 if at least two-thirds of the members of the Producer  
22 Board support the revisions. For any revisions, the  
23 Secretary shall consider—

24 “(A) the economic conditions of the dairy  
25 industry in the United States;

1 “(B) the economic conditions of the world  
2 dairy market;

3 “(C) the commercial disappearance of fluid  
4 and manufactured milk products;

5 “(D) the domestic on-farm cost of pro-  
6 ducing raw milk;

7 “(E) the domestic farm-gate milk price  
8 paid to dairy farmers in the United States;

9 “(F) the international value of manufac-  
10 tured dairy products;

11 “(G) the current United States import/ex-  
12 port balance in dairy products;

13 “(H) any foreseen purchases by the Fed-  
14 eral Government for nutrition programs; and

15 “(I) any other economic indicator that the  
16 Secretary determines to be appropriate.

17 “(c) ALLOWABLE MILK MARKETINGS.—

18 “(1) IN GENERAL.—At least 30 days before the  
19 first day of each quarter, the Secretary shall—

20 “(A) establish the quantity of allowable  
21 milk marketings for each dairy facility; and

22 “(B) notify each dairy facility of the quan-  
23 tity.

24 “(2) APPEAL.—A dairy facility may appeal to  
25 the Secretary any discrepancy in the quantity of al-

1        allowable milk marketings established for the dairy fa-  
2        cility.

3            “(3) TRANSFERS OF ALLOWABLE MILK MAR-  
4        KETINGS.—The 1 or more owners of the milk-pro-  
5        ducing cows at a dairy facility may transfer, in full,  
6        the allowable milk marketings associated with the  
7        dairy facility to—

8            “(A) an individual or entity that purchases  
9        the dairy facility; or

10          “(B) another dairy facility under the same  
11        ownership.

12          “(4) LEAP-YEAR ADJUSTMENT.—

13            “(A) EFFECT OF LEAP YEAR.—During a  
14        calendar year that consists of 366 days,  $\frac{1}{90}$ th  
15        of the allowable milk marketings for the first  
16        quarter shall be added to the allowable milk  
17        marketings of each dairy producer.

18            “(B) SUBSEQUENT YEAR.—Following a  
19        year described in subparagraph (A),  $\frac{1}{91}$ st of  
20        the allowable milk marketings shall be sub-  
21        tracted from the allowable milk marketings of  
22        each dairy producer during the preceding year.

23          “(d) COLLECTION OF MARKET ACCESS FEES.—

24            “(1) IN GENERAL.—During any quarter, a  
25        dairy facility that produces and markets milk in a

1 quantity that is greater than the allowable milk mar-  
2 ketings of the dairy facility for that quarter shall be  
3 assessed the standard market access fee in the fol-  
4 lowing quarter unless, not later than 7 days after  
5 the end of the quarter, the dairy facility notifies in  
6 writing the appropriate local office of the Farm  
7 Services Agency of the intent of the dairy facility to  
8 pay the alternative market access fee in lieu of the  
9 standard market access fee.

10 “(2) NOTICE.—Not later than 25 days after the  
11 end of a quarter during which a dairy facility ex-  
12 ceeded the allowable milk marketings of the dairy fa-  
13 cility, the Secretary shall send to the dairy facility  
14 and to each of the milk handlers of the dairy facility  
15 a notice that describes the market access fee to be  
16 assessed against the dairy facility during the fol-  
17 lowing quarter.

18 “(3) MILK HANDLERS.—

19 “(A) IN GENERAL.—Each milk handler of  
20 a dairy facility notified under paragraph (2)  
21 shall—

22 “(i) during the quarter in which the  
23 milk handler receives the notice, collect an  
24 assessment per hundredweight of milk  
25 from the dairy facility in the amount of the



1 market access fee described in the notice;  
2 and

3 “(ii) deposit the assessment amounts  
4 into the protected account described in  
5 subsection (f).

6 “(B) ALTERNATIVE MARKET ACCESS  
7 FEE.—If a dairy facility notifies the appropriate  
8 local office of the Farm Services Agency under  
9 paragraph (1) of an intent to pay the alter-  
10 native market access fee, the amount of the as-  
11 sessment described in the notice under para-  
12 graph (2) shall be—

13 “(i) deducted from the revenues of the  
14 dairy facility in 3 equal monthly install-  
15 ments; and

16 “(ii) deposited into the protected ac-  
17 count described in subsection (f).

18 “(4) SUBSEQUENT OVERAGES.—If a dairy facil-  
19 ity exceeds the allowable milk marketings of the  
20 dairy facility in a quarter and any of the 4 subse-  
21 quent quarters, the dairy facility shall be assessed a  
22 market access fee in an amount that is equal to the  
23 lesser of—

1           “(A) the market access fee announced  
 2           after the first quarter in which the dairy facility  
 3           exceeded the allowable milk marketings; or

4           “(B) the market access fee announced for  
 5           the 4 quarters in which the dairy facility subse-  
 6           quently exceeds the allowable milk marketings  
 7           of the dairy facility.

8           “(5) RESPONSIBILITY.—The milk handler for  
 9           the 1 or more owners of the milk-producing cows at  
 10          a dairy facility that receives a notice under para-  
 11          graph (2) shall give notice to the owners that the  
 12          market access fees shall be—

13                 “(A) deducted from the proceeds of the  
 14                 dairy facility; and

15                 “(B) submitted to the local office of the  
 16                 Farm Services Agency with which the owners  
 17                 have registered.

18          “(e) PAYMENT OF MARKET ACCESS FEE DIVI-  
 19          DENDS.—

20                 “(1) IN GENERAL.—During any quarter, a  
 21                 dairy facility that produces and markets a quantity  
 22                 of milk that is less than or equal to the allowable  
 23                 milk marketings of the dairy facility for that quarter  
 24                 shall be entitled to receive a market access fee divi-  
 25                 dend in an amount based on the ratio that—

1           “(A) each hundredweight of allowable milk  
2           marketings produced during that quarter at the  
3           dairy facility; bears to

4           “(B) total hundredweights produced by all  
5           facilities that did not exceed their allowable  
6           milk marketings during that quarter.

7           “(2) TOTAL AMOUNT.—The total amount of  
8           market access fee dividends available during a quar-  
9           ter shall be equal to the cumulative market access  
10          fees collected under this subtitle for a quarter.

11          “(3) DISTRIBUTION.—

12           “(A) IN GENERAL.—The market access fee  
13           dividends for a quarter shall be distributed to  
14           each qualifying dairy facility not later than 30  
15           days after the last day of the following quarter.

16           “(B) ELIGIBILITY.—The 1 or more owners  
17           of the milk-producing cows at a dairy facility  
18           described in paragraph (1) shall be eligible to  
19           receive any market access fee dividends paid to  
20           the dairy facility under this subsection.

21           “(C) PAYMENT.—Payment of market ac-  
22           cess fee dividends shall be by check or direct  
23           deposit.

24          “(f) ADMINISTRATION.—Amounts collected by milk  
25          handlers under subsection (d) shall be deposited into a

- 1 protected account established by the Secretary from which
- 2 amounts may not be withdrawn other than for distribution
- 3 as market access fee dividends.”.

